

# OHIYA CASINO – Santee Sioux Tribe



Niobrara, NE 68760-7200

SEP - 7 2006

11-946-11

## MEMORANDUM

September 5, 2006

TO: National Indian Gaming Commission

Attention: P. Coleman

From: Santee Sioux Nation  
Chairman Roger Trudell

*Roger Trudell*  
(TT)

RE: Santee Sioux Nation Tribal Resolution

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Please find enclosed Tribal Resolution # 61-2006, regarding our Tribe's opposition to the NIGC's proposed Class II regulations. Thank You.

2006 SEP - 7 - PM 4: 49

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NATIONAL INDIAN  
GAMING COMMISSION

# *Santee Sioux Nation*

COUNCIL HEADQUARTERS / MUSEUM

Chairman: Roger Trudell  
Vice Chairman: David Henry  
Treasurer: Robert Campbell  
Secretary: Wyatt Thomas



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SEP - 7 2006

## RESOLUTION OF THE SANTEE SIOUX NATION

Resolution No. # 61 -06

**WHEREAS:** the Santee Sioux Nation is a federally-recognized Indian Tribe pursuant to Section 16 of the Act of June 18, 1934, (48 Stat. 984), codified at 25 U.S.C. 476, *et seq.*, as amended by the Act of June 15, 1935, (49 Stat. 378); and

**WHEREAS:** the Santee Sioux Nation Tribal Constitution, amended on August 30, 2002 by Secretarial Election, recognizes the Powers of Self Governance and authorizes the Tribal Council to make decisions effecting the tribe and its members; and

**WHEREAS:** The United States Congress passed the Indian Gaming Regulatory Act 25 U.S.C. 2701, *et seq.*, in 1988 in recognition of tribal sovereignty and in order to provide a viable source of economic development for Indian tribes around the country; and

**WHEREAS:** The Santee have decided that it is in the best interests of the tribe to operate a class II gaming facility; and

**WHEREAS:** The Santee have fought in excess of ten years in order to operate a class II gaming facility permitted under the statute; and

**WHEREAS:** The Department of Justice has continued to challenge existing legal precedent in challenging Indian tribes, including the Santee Sioux from exercising its sovereign right to game; and

**WHEREAS:** The Santee Sioux Nation has continually fought to operate the games its currently has in its modest gaming facility; and

**WHEREAS:** Pursuant to the proposed NIGC Regulations, none of the current games operated within the tribe's Ohiya Casino will be permitted should the regulations take effect; and

**WHEREAS:** The ability to operate successful Class II games, which people will actually play and enjoy playing, is vital to the Tribal government in order to conduct basic governmental functions;

**NOW THEREFORE BE IT RESOLVED** that the Santee Sioux Nation Tribal Council formally request that the NIGC not take any further actions to formalize the draft regulations for the following reasons:

- This Tribe is concerned about these proposed regulations because we believe the proposed regulations unfortunately take a step toward further diminishing tribe's inherent authority to conduct gaming
  - We see the Commission as a front-line agency implementing and protecting the federal governments trust responsibility toward Indian tribes.
  - Our Tribe is therefore opposed to the proposed regulations because we believe the current regulations enable our Tribe to conduct Indian gaming in a manner best suited for economic development.

**Procedural Comments and Recommendations**

- We urge the Commission to hold a Global Tribal Leader Consultation for the record.
  - Doing so will allow leaders to hear what other tribal leaders are seeking and new ideas will develop from their interaction.
- We urge the Commission to work with tribes to draft language if the proposed regulation moves forward that minimizes impacts

**I. Proposed Changes to term "Electronic or Electromechanical Facsimile"**

- The Tribe believes the current law is working and therefore there is no need for changing the definition of "electronic or electromechanical facsimile of any game."
  - Under IGRA, Indian tribes are expressly permitted to operate Class II gaming with the aid of "electronic, computer or other technologic aids." 25 U.S.C. § 2703(7)(A).
- We believe that the proposed change to the definition is an effort to reverse court precedent.
  - The Commission offers no studies, no evidence that the shows the public or anyone else is supposedly "misconstruing the law" as to what a facsimile is or is not
  - Numerous circuit courts of appeals rejected the United States' arguments that various devices were Class III devices. *See, e.g.,*

*United States v. Santee Sioux Tribe of Nebraska*, 324 F.3d 607 (8th Cir. 2003); *Seneca-Cayuga Tribe v. NIGC*, 327 F. 3d 1019(10th Cir. 2003); *United States v. 103 Electronic Gambling Devices*, 223 F.3d 1091, 1102 (9th Cir. 2000); *Diamond Game Enterprises., Inc. v. Reno*, 230 F.3d 365 (D.C.Cir.2000).

- A proposal to change the definition would in fact broaden the definition of Class II facsimile and therefore nearly prohibit all machines that have been consistently found by the court as Class II.
  - **The substantial broadening of the definition will bring Class II gaming using electronic gaming to a halt and undermine the purpose of IGRA to promote economic development.**
  - The gaming our Tribe will consider has consistently been upheld to be Class II games and not facsimiles prohibited under IGRA.

### **Substantive Comments and Recommendations**

#### **II. Proposed Changes – Classification Standards and Class II/Class III Demarcations**

- **No classification standards are needed.**
- Any confusion concerning the distinction between Class II and Class III classifications comes not from the tribes or public
  - The courts and Indian tribes are clear on these distinctions.
- **NIGC has offered no evidence the general public is confused or at risk requiring a clear demarcation between Class II and Class II games, as the courts have made these provisions clear.**

### **Specific Provisions**

- **We believe auto-daub should allowed under Class II games**
- The mandatory changes with regard to one-touch (auto-daub) bingo game system would economically eviscerate Class II gaming and therefore should be stricken from the proposal.
  - There should be no restriction as to the speed of the game
  - Will experience a 75-80% drop in revenue. And this is simply not a viable economic model for our Tribe. Along with other market conditions such as player boredom, will dramatically decrease players and tribal investment.
  - A one-touch or auto daub bingo game system can be completed in approximately 2 seconds.
  - The proposed regulations will require that each game require a minimum of 8, and up to 10 seconds for a player to cover.
  - **We recommend that the Commission revise this timing provision to balance the Commission's interest in classification demarcation and game profitability.**

- There are numerous arbitrary provisions proposed in the rule that are proposed without sufficient and substantial explanation describing their respective derivation.
- **There should be no restriction on displays**
  - For example, the proposal calls for that alternative to take-up no more than 49 percent of the game's display. NIGC offers no evidence or explanation why specifically "49 percent" is the screen space that legitimizes the alternative representations.
  - The proposal requires the numbers or designations that are to be used must be randomly drawn from a non-replaceable pool containing 75 numbers
    - The replacement pool figure provision should be removed.
    - NIGC offers no evidence or explanation why 75 numbers is critical to the game.
    - While it appears this proposed regulation merely codifies a traditional rule of bingo, this leads to the perception and perhaps rightly so—that NIGC is interested in creating restrictions to Class II gaming that bed notion of classic or nostalgic "bingo" from our childhood church gymnasiums.
  - Similarly, the requirement that each card must contain a five by five grid of spaces is also arbitrary.
    - NIGC offers no evidence or explanation why five by five is critical to the game.
    - This is the type of card intended previous NIGC advisory opinions and more importantly court cases are to the contrary.
    - Like the replacement pool provisions such a five-by-five requirement reinforces that NIGC believes that bingo may only be played in its nostalgic format.
    - In addition, an arbitrary condition in the proposed regulations is that all technologic aids must display for example: "THIS IS A GAME OF BINGO" or THIS IS A GAME SIMILAR TO BINGO." Disclaimers on the machines like these, strike tones of paternalism and overprotection.
    - We recommend striking this provision and believe any proposed regulations should have no restrictions on the display generally.
- **Classification determination needs due process protections**
  - The proposed rule also provides for an approval process and verification of electronic and computer or other technologic aids classification.
  - Only the NIGC Chairman may object to the classification, leaving Tribe's at the behest of what will likely be perceived as politics.
  - Therefore, we believe these provisions are out of line with fundamental principles of due process and undermine Tribal law

and regulations of Class II gaming and should be stricken from the proposal.

### CERTIFICATION

This will certify that the foregoing resolution was considered at a meeting of the Santee Sioux Tribal Council of the Santee Sioux Tribe of Nebraska, duly called and held on the 1 day of Sept, 2006, and was adopted by a vote of 7 FOR, 0 AGAINST and 1 NOT VOTING OR ABSENT. A quorum of 8 was present.

Dated this 1st day of Sept, 2006.



Roger Trudell, Chairman  
SANTEE SIOUX TRIBAL COUNCIL

ATTEST:



Wyatt Thomas, Secretary  
SANTEE SIOUX TRIBAL COUNCIL